

CDT Files FTC Complaint Against Medical Justice

by [Justin Brookman](#) [1]
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Further Reading

Earlier today, CDT filed a [formal complaint](#) [2] with the Federal Trade Commission and various state Attorneys General alleging that the company Medical Justice has committed deceptive and unfair business practices in violation of the FTC Act. We've [written](#) [3] about Medical Justice before — they sell a suite of "reputation defender" services to doctors and dentists across the nation. One way that they claim to protect their clients' reputation is by distributing form contracts for patients to sign that either prohibit patients from commenting online or posting reviews about the doctor, or assign a copyright interest in any online reviews to the doctor, so the doctor can get them removed from the web at his or her discretion. As a result, doctors can ban patients from warning others about problems they might have had, or have an unchecked veto power to remove reviews they think are unfair or inappropriate. If a patient doesn't want to sign the contract, the doctor can refuse to give medical treatment. (For more information and analysis of Medical Justice's contracts, check out [DoctoredReviews.com](#) [4], an excellent site run by law professors Eric Goldman of Santa Clara and Jason Schultz of Cal dedicated to calling out these bad practices.)

In our complaint, we allege that these practices aren't just bad and unethical — they're also illegal. Medical Justice's prior restraints on patients' speech are unconscionable and unenforceable under contract law — typically, you can only contractually bind someone not to speak freely if there's a trade secret or other confidential information at stake. However, Medical Justice markets its contracts as an effective solution for combating slanderous and fraudulent reviews, including by ex-spouses and competitor doctors (who never would have signed the unenforceable contracts in the first place). Medical Justice also claims that their contracts offer extra "privacy protections" for the patients that sign them — a fact that has [no grounding in reality](#) [5].

We allege that the contracts are "unfair" under FTC law as well. They harm current patients by threatening their free speech rights and future patients from getting valuable information about the doctors to whom they're considering entrusting their medical care. Patients can't reasonably avoid this harm — after you've taken off two hours from work to see a doctor about that blinding toothache, are you really likely to leave to try to find another dentist who'll see you next week over a review that you don't know you want to write yet?

And finally, there's no countervailing benefit to these contracts — doctors who think they're being defamed already have remedies under the law, and can sue to unmask (and receive damages from) commenters who make libelous statements. Medical Justice contracts are merely intended to short-circuit the established legal process for combating unwanted anonymous speech, and instead give doctors the chance to fraudulently curate their online reputation by pruning away inconvenient statements.

In addition, we have asked the FTC to investigate claims that Medical Justice is also deceptive by seeding consumer review sites with misleading positive reviews about doctors. Both RateMDs and Yelp [have discovered](#) [6] uniformly positive reviews being uploaded about doctors from Medical Justice web servers. The FTC has already done excellent work in this area of online "astroturfing" with its updated [Endorsement Guidelines](#) [7], but there is still a lot of gray area for companies, especially as social media has dramatically expanded in importance even since the guidelines came out two years ago. Can doctors pick and choose among the reviews they solicit from patients to put on their website? Can they upload them to Yelp under assumed names? Can doctors require patients to "Like" them on Facebook before providing medical treatment, or for a discount? How does all this need to be disclosed?

Based on what we can see, we believe that Medical Justice's tactics cross the line, but this case presents a great opportunity for the FTC to craft strong injunctive relief to give companies more clarity on to promote themselves through social media without deceiving consumers.

Online reputation management is going to be an increasingly important issue for doctors, companies, and even individuals in the coming years. But managing your public image should not be achieved through trickery and abusive behavior. Regulators need to stop bad actors from gaming the robust reputation-based ecosystem that we have come to rely on everyday. We will all be much worse off if review sites become polluted by shill endorsements and deprived of honest criticism.

- [Medical Justice](#)
- [investigate](#)
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